

United States District Court

DISTRICT OF OREGON

UNITED STATES OF AMERICA

v.

MARTINEZ, JOSE ANTONIO

CRIMINAL COMPLAINT

CASE NUMBER:

06-mj-505

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about October 4, 2006 in Multnomah County, in the District of Oregon defendant(s) did,

On October 4, 2006 in the District of Oregon, Jose Antonio Martinez, defendant herein, did knowingly use or attempt to use a means of interstate commerce, the Internet, to persuade, induce or entice an individual who has not attained the age of 18 years to engage in sexual activity for which said defendant can be charged with a criminal offense.

in violation of Title 18 United States Code, Section(s) 2422(b).

I further state that I am a(n) FBI Task Force Officer and that this complaint is based on the following facts:
Official Title

See Attached Affidavit of Chadwick J. Opitz, incorporated herein.

FILED 06 OCT 05 11:29 AM -08P

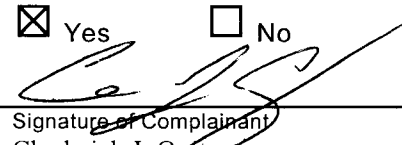
Continued on the attached sheet and made a part of this complaint:



Yes



No


Signature of Complainant
Chadwick J. Opitz

Sworn to before me and subscribed in my presence,

FBI Task Force Officer/Beaverton Police Detective

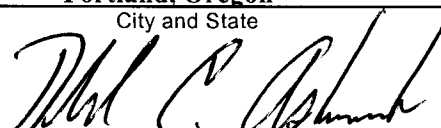
October 5, 2006
Date and Time Issued

11:24 A.M.

at

Portland, Oregon
City and State

Hon. Donald C. Ashmanskas, United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

I, Chadwick J. Opitz, being first duly sworn, depose and state:

I am a Detective with the Beaverton Police Department and have been so employed since April 1999. I am currently assigned to the Portland Division of the Federal Bureau of Investigation (FBI) as a Task Force Officer (TFO), where I investigate computer crimes. I have been working as a task force officer since February 2006. I have received training in the investigation of computer, telecommunications, and other technology crimes. Since February 2006, I have been involved in the investigation of matters involving the sexual exploitation of children, to include the online sexual exploitation of children, particularly as it relates to violations of Title 18, United States Code, § 2422(b). I have made arrests and conducted searches pertaining to these types of investigations. I am a part of the Portland Innocent Images National Initiative (IINI) Undercover Operation Task Force, which includes FBI Service Special Agents. IINI is an intelligence-driven, proactive, multi-agency investigative initiative to combat the proliferation of child pornography/child sexual exploitation facilitated by an online computer. As a member of this Task Force, I have received training and certification at the FBI Calverton Resident Agency in areas related to online computer crime investigation involving child pornography and other aspects of child exploitation.

The statements contained in this Affidavit are based on my experience and background as a Special Agent, and on information provided by other agents of the FBI, and other law enforcement officers. I have not set forth every fact resulting from the investigation, rather, I have set for a summary of the investigation to date in order to establish probable cause to charge Jose Antonio Martinez, a/k/a Yahoo! screen name "ontop503" with using a means of interstate commerce to attempt or persuade, induce, entice or coerce a minor to engage in sexual activity in violation of Title 18, United States Code, Section 2422(b).

SUMMARY: This complaint refers to an attempted enticement of a perceived 14 year old female who Jose Antonio Martinez aka "ontop503" attempted to meet with for the purpose of engaging in sexual intercourse. The planning for this meeting is evidenced by internet conversations, known as "chat" which indicate that Jose Antonio Martinez aka "ontop503"

believed the 14 year old girl was available and willing to engage in sexual intercourse with Jose Antonio Martinez aka "ontop503", who stated his age 19. His attempt to engage in this conduct, and his enticement of the perceived teenage constitutes an offense involving online internet exploitation of children by acts to induce or persuade a minor to engage in sexual activity.

LEGAL AUTHORITY:

Oregon Revised Statute 163.355 provides that a person who has sexual intercourse with another person commits the crime of rape in the third degree if the other person is under 16 years of age. Rape in the third degree is a Class C felony. Oregon Revised Statute 163.305 definition of "sexual intercourse" states "has its ordinary meaning and occurs upon any penetration, however slight; emission is not required."

Oregon Revised Statute 163.385 provides that a person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the third degree if the other person is under 16 years of age. Sodomy in the third degree is a Class C felony. Oregon Revised Statute 163.305 definition of "Deviate Sexual Intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

Oregon Revised Statute 163.415 provides that a person commits the crime of sexual abuse in the third degree if the person subjects another person to sexual contact and the victim does not consent to the sexual contact; or the victim is incapable of consent by reason of being under 18 years of age. Sex abuse in the third degree is a Class A misdemeanor. Oregon Revised Statute 163.305 definition of "Sexual Contact" means any touching of the sexual or other intimate parts of a person or causing such persons to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

Oregon Revised Statute 161.405 provides that a person is guilty of an attempt to commit a crime when the person intentionally engages in conduct which constitutes a substantial step toward commission of the crime. An attempt is a Class A misdemeanor if the offense attempted is a Class C felony. An attempt is a Class B misdemeanor if the offense attempted is a Class A misdemeanor.

For the reasons set forth below, I contend this affidavit contains ample probable cause to believe that Jose Antonio Martinez aka "ontop503" has used a means of interstate commerce, namely the Internet, to attempt to or knowingly persuade, induce, entice or coerce an individual who has not attained the age of 18 years to engage in sexual activity for which any person can be charged with a criminal offense. In this case, the applicable sexual activity I believe Jose Antonio Martinez aka "ontop503" proposed to carry out with an individual who he believed to be a 14 year old minor female, included, but is not limited to, oral sex and vaginal intercourse.

YAHOO! CHAT

Yahoo!, is a commercial Internet Service Provider (ISP) that offers subscribers access to electronic bulletin boards which can be read and responded to by other subscribers, known as "chat." "Chat" is real-time type-written conversation between people, much like a verbal conversation. Yahoo! also provides electronic mail (E-mail) service, enabling subscribers to communicate by computer similar to writing letters and sending through normal mail. Each subscriber can communicate with other Yahoo! users either in real-time through either chat rooms, private chat rooms or instant messages, if the other subscriber is also online, or via E-mail. Within the system, text messages and graphic images (such as photographs) can be sent to a subscriber, or to any person with an Internet E-mail address. Both text and graphics files can be saved to the computer disk drive for access and printing at any time.

OVERVIEW OF INVESTIGATION

The information provided in this affidavit is the summation of an investigation conducted by myself, acting in an undercover capacity (UCA) on the Yahoo! system, and using a computer in Portland, Oregon. All communications via computer made during this investigation were with an individual using the Yahoo! screen name "ontop503." The one conversation between the UCA and "ontop503" was by contact through instant messages on Yahoo!. The conversation took place on October 4, 2006. Included below are the instant messages chat, I had with "ontop503" while posing as a fourteen year old girl.

On October 4, 2006, at approximately 1:11 pm (PDT), I was logged on Yahoo! posing

as a 14-year old female from Beaverton, Oregon. While I was logged on and had entered a chat room entitled Oregon:2, the screen name "ontop503" contacted me using an instant message. Near the end of the conversation, I sent "ontop503" an undercover photograph on an underage girl so he knew what I supposedly looked like. It should be noted that Yahoo! archiving cuts off the first line of the chat showing "ontop503" contacting me. To protect my online identity, I have omitted the actual screen name from the chats below and refer to myself as UCA (UnderCover Agent):

UCA (10/4/2006 1:11:11 PM): more in port
 UCA (10/4/2006 1:11:26 PM): off farm rd
 ontop503 (10/4/2006 1:11:29 PM): cool me too so what are you up to today?
 UCA (10/4/2006 1:12:50 PM): nuttin...u
 ontop503 (10/4/2006 1:13:33 PM): just chillin so do you smoke ?420?
 UCA (10/4/2006 1:14:29 PM): ihav.....not round mommy....lol
 ontop503 (10/4/2006 1:14:39 PM): age?
 ontop503 (10/4/2006 1:15:09 PM): wann kick it?
 UCA (10/4/2006 1:15:26 PM): i hear u
 UCA (10/4/2006 1:15:46 PM): brb....
 ontop503 (10/4/2006 1:15:59 PM): im gonna get off soon
 UCA (10/4/2006 1:16:57 PM): k.....where r goin kick it?
 ontop503 (10/4/2006 1:17:29 PM): my house or ??
 UCA (10/4/2006 1:17:48 PM): cool.....u live by yurself
 ontop503 (10/4/2006 1:17:54 PM): roomies but they are gone
 ontop503 (10/4/2006 1:17:55 PM): age?
 UCA (10/4/2006 1:18:02 PM): 14
 UCA (10/4/2006 1:18:03 PM): u
 ontop503 (10/4/2006 1:18:08 PM): cool could i call?
 ontop503 (10/4/2006 1:18:10 PM): 19
 UCA (10/4/2006 1:18:14 PM): nice....
 UCA (10/4/2006 1:18:27 PM): can u cum and pick me up?
 ontop503 (10/4/2006 1:18:38 PM): oh ya where?
 ontop503 (10/4/2006 1:18:55 PM): ?
 ontop503 (10/4/2006 1:19:08 PM): only if you suck.....
 ontop503 (10/4/2006 1:19:39 PM): lol?
 UCA (10/4/2006 1:19:46 PM): ive dun it b4
 UCA (10/4/2006 1:19:48 PM): not very good
 ontop503 (10/4/2006 1:19:49 PM): ok
 UCA (10/4/2006 1:19:51 PM): at it
 ontop503 (10/4/2006 1:19:59 PM): so u wanna fuk?
 UCA (10/4/2006 1:20:05 PM): still the big v
 ontop503 (10/4/2006 1:20:09 PM): so where do i pick you up at?

UCA (10/4/2006 1:20:56 PM): i cant get preg
ontop503 (10/4/2006 1:21:05 PM): not a problem
ontop503 (10/4/2006 1:21:35 PM): condoms
ontop503 (10/4/2006 1:21:49 PM): so im leaving, if you tell me where to pick you up

at

UCA (10/4/2006 1:22:23 PM): wait...dont lea e yet
UCA (10/4/2006 1:22:25 PM): leave
ontop503 (10/4/2006 1:22:26 PM): ok
ontop503 (10/4/2006 1:22:49 PM): directions?
UCA (10/4/2006 1:22:50 PM): where do u think we cood meet?
ontop503 (10/4/2006 1:22:55 PM): u tell me????
UCA (10/4/2006 1:23:01 PM): ummm...
UCA (10/4/2006 1:23:56 PM): wait
ontop503 (10/4/2006 1:24:01 PM): im off farmington too so where though ?
UCA (10/4/2006 1:24:06 PM): do u have a pic?
UCA (10/4/2006 1:24:17 PM): i can send u 1...
ontop503 (10/4/2006 1:24:28 PM): my cam is borke
ontop503 (10/4/2006 1:24:34 PM): sure send
UCA (10/4/2006 1:24:37 PM): not a cam...a pic...
ontop503 (10/4/2006 1:24:46 PM): well im not on my pc
UCA (10/4/2006 1:24:51 PM): do u have 1 on ur comp
UCA (10/4/2006 1:24:56 PM): whre r u?
ontop503 (10/4/2006 1:25:00 PM): at a cafe
UCA (10/4/2006 1:25:03 PM): huh
ontop503 (10/4/2006 1:25:13 PM): its ok i dont have a pic can you send urs?
UCA (10/4/2006 1:25:20 PM): how do i no it is u
UCA (10/4/2006 1:25:29 PM): we can meet at btc
ontop503 (10/4/2006 1:25:35 PM): btc whats that?
UCA (10/4/2006 1:25:41 PM): beav trans cent
UCA (10/4/2006 1:25:48 PM): i can get on bus
ontop503 (10/4/2006 1:26:03 PM): no need whn i could meet you closer u tell me
ontop503 (10/4/2006 1:26:09 PM): where on farmington are you ?
UCA (10/4/2006 1:26:44 PM): near schlls ferry
ontop503 (10/4/2006 1:27:06 PM): i could meet u at the bus stop at scholls and

farmington

ontop503 (10/4/2006 1:27:10 PM): pic
ontop503 (10/4/2006 1:27:20 PM): what are you wearing today
UCA (10/4/2006 1:27:36 PM): no way.....how do i not no u r not sum rape dude
UCA (10/4/2006 1:27:48 PM): just wierd u do not have pic
ontop503 (10/4/2006 1:27:49 PM): why would i rape you if you dont like u
ontop503 (10/4/2006 1:28:07 PM): its cuz im at a cafe and its not my puter and te cam

is broke here

UCA (10/4/2006 1:28:34 PM): what is yur name then....im chelc

ontop503 (10/4/2006 1:28:40 PM): Trey
ontop503 (10/4/2006 1:28:52 PM): <http://www.myspace.com/105747177>
ontop503 (10/4/2006 1:29:20 PM): ??
ontop503 (10/4/2006 1:29:22 PM): well?
UCA (10/4/2006 1:29:30 PM): k....is it goin hurt when we have sex?
UCA (10/4/2006 1:29:37 PM): member still big v
UCA (10/4/2006 1:29:45 PM): u got somethin 4 that?
ontop503 (10/4/2006 1:29:52 PM): yes i do
ontop503 (10/4/2006 1:29:54 PM): ok
ontop503 (10/4/2006 1:29:57 PM): so where do we meet?
ontop503 (10/4/2006 1:30:00 PM): what time?
UCA (10/4/2006 1:30:13 PM): u got 420 and wine coolers?
ontop503 (10/4/2006 1:30:20 PM): i got 420
ontop503 (10/4/2006 1:30:23 PM): if you suck it
ontop503 (10/4/2006 1:30:30 PM): ok wine coolers too
UCA (10/4/2006 1:30:47 PM): hmmm.....how many bowls u let me smoke if i suck

it?

ontop503 (10/4/2006 1:30:58 PM): how many u want?
UCA (10/4/2006 1:31:09 PM): depnds
ontop503 (10/4/2006 1:31:11 PM): on
ontop503 (10/4/2006 1:31:18 PM): do i get to suck u?
UCA (10/4/2006 1:31:28 PM): i wood like that
ontop503 (10/4/2006 1:31:39 PM): ok then well i have to get off my time is up
UCA (10/4/2006 1:31:47 PM): wait
UCA (10/4/2006 1:31:53 PM): want mi pic?
ontop503 (10/4/2006 1:31:59 PM): send it
ontop503 (10/4/2006 1:32:10 PM): hurry i have like 2 mins left
UCA (10/4/2006 1:32:11 PM): u goin be there?
ontop503 (10/4/2006 1:32:14 PM): i will
ontop503 (10/4/2006 1:32:25 PM): at 1;45
ontop503 (10/4/2006 1:32:27 PM): send the pic
ontop503 (10/4/2006 1:32:56 PM): ur cute
UCA (10/4/2006 1:33:07 PM): really?
ontop503 (10/4/2006 1:33:08 PM): so at the bus stop on farmington and schools
ontop503 (10/4/2006 1:33:12 PM): yys
ontop503 (10/4/2006 1:33:14 PM): yes
ontop503 (10/4/2006 1:33:21 PM): ne more?
UCA (10/4/2006 1:33:42 PM): k....230....what car i look 4?
ontop503 (10/4/2006 1:34:02 PM): so at 2 would be better it will be asilver civic
ontop503 (10/4/2006 1:34:16 PM): whatlocation why dont we meet at the sesame

donuts?

ontop503 (10/4/2006 1:34:20 PM): ???
UCA (10/4/2006 1:34:34 PM): k.....u bring cond and 420?

ontop503 (10/4/2006 1:34:38 PM): ok
ontop503 (10/4/2006 1:34:47 PM): sesame donuts is ok?
UCA (10/4/2006 1:34:54 PM): wait.....yur myspace said ur 30
UCA (10/4/2006 1:35:00 PM): it is ok....but i need 2 no
ontop503 (10/4/2006 1:35:06 PM): my bro uses it also
UCA (10/4/2006 1:35:11 PM): sesame is ok
ontop503 (10/4/2006 1:35:20 PM): ok then i got to go so 2 right??
UCA (10/4/2006 1:35:23 PM): ill be inside sesame
ontop503 (10/4/2006 1:35:25 PM): ok
UCA (10/4/2006 1:35:33 PM): 215
ontop503 (10/4/2006 1:35:35 PM): just come out to the cat
ontop503 (10/4/2006 1:35:36 PM): car
ontop503 (10/4/2006 1:35:41 PM): 215 is cool
UCA (10/4/2006 1:35:43 PM): k....ill be lookin 4 u
UCA (10/4/2006 1:35:53 PM): if im not there right away...wait 4 me
ontop503 (10/4/2006 1:35:55 PM): will u be there with someone or alone?
ontop503 (10/4/2006 1:35:57 PM): ok
UCA (10/4/2006 1:36:07 PM): alone.....u think im crazy
ontop503 (10/4/2006 1:36:13 PM): ok ok
ontop503 (10/4/2006 1:36:16 PM): bye see u ther
UCA (10/4/2006 1:36:29 PM): i live by safeway....ill just walk across the street
ontop503 (10/4/2006 1:36:33 PM): ok ok bye

Based on my training and experience, I know the term "420" is slang for the drug marijuana. During the conversation with "ontop503", he stated "i got 420" and asked "do you smoke ?420?".

On October 4, 2006, at approximately 2:05 pm (PDT), Beaverton Police Detectives Dale Hoskins and Dan Coulson were set-up in the parking lot for the Sesame Donut restaurant located near the intersection of SW Oleson Road and SW Beaverton Hillsdale Highway in Beaverton, Washington County, Oregon. I told Detective Hoskins and Detective Coulson that "ontop503" said he would be driving a silver colored Honda Civic.

At approximately 2:15 pm, Detective Hoskins told me he observed a silver Honda Civic with Texas license plate #620KVM drive through the Sesame Donuts parking lot. FBI Agents and I arrived in the area of Sesame Donuts the same time the silver Honda Civic was driving through the Sesame Donuts parking lot.

I observed the same silver colored Honda Civic with Texas license plate #620KVM, turn south on SW Oleson from the Sesame Donuts parking lot. The driver of Honda Civic made

the first left turn into a parking lot, turned around and came back out onto SW Oleson Road. The Honda Civic proceeded north on SW Oleson and turned right into another parking lot, which was directly across the street (Oleson Road) from the Sesame Donuts parking lot. The driver of the vehicle parked in the parking lot for a few seconds and drove back out onto SW Oleson Road. The driver of the silver Honda Civic turned right (east) onto SW Beaverton-Hillsdale Highway.

After a few minutes, the silver Honda Civic with Texas license plate #620KVM drove back west on SW Beaverton Hillsdale Highway and turned left (south) on SW Oleson Road and into the Sesame Donuts parking lot. The driver of the silver Honda Civic backed the vehicle into a parking spot so the front of the car was pointing at the front doors of Sesame Donuts. After approximately three to four minutes, the driver of the silver Honda Civic left the Sesame Donuts parking lot and turned left onto SW Oleson Road and then right onto SW Beaverton Hillsdale Highway. Detective Hoskins told me the driver of the silver Honda Civic made an improper right turn from SW Oleson onto SW Beaverton Hillsdale Highway. Detective Hoskins said he observed the Honda Civic go into the far outside lane of SW Beaverton Hillsdale Highway when making the right hand turn.

Beaverton Police Officer Marc Hevern conducted a traffic stop on the silver Honda Civic with Texas license plate #620KVM at Beaverton Hillsdale Highway and SW 59th. The driver of the Honda Civic was identified as Jose Antonio Martinez. Jose Antonio Martinez resides at 5920 SW Erickson #15 in Beaverton, Oregon.

FBI Special Agent Jane Brillhart and I contacted Jose Antonio Martinez during the traffic stop. Jose Antonio Martinez first said he was in the area looking for condominiums and apartments. I asked Jose Antonio Martinez what he was doing in the parking lot of Sesame Donuts and he told me he was going to meet a girl. I then advised Jose Antonio Martinez of his Miranda Rights. I read an Advice of Rights form to Jose Antonio Martinez. Jose Antonio Martinez told me he understands his Miranda Rights and signed the Advice of Rights form.

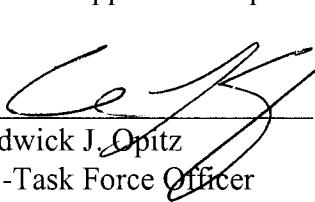
Jose Antonio Martinez said he could not remember the girl's name. Jose Antonio Martinez stated he just started talking to the girl that afternoon from Cyberscape internet cafe located at 4130 SW Lombard Avenue in Beaverton, Oregon. Jose Antonio Martinez stated he was supposed to meet the girl at Sesame Donuts around 2:15 pm. Jose Antonio Martinez first

said he thought the girl was eighteen. I told Jose Antonio Martinez that the conversation between him and the girl shows the girl told him she was 14. Jose Antonio Martinez then told me "I fucked up, I fucked up big time....I remember, I fucked up".

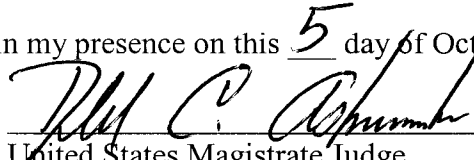
Jose Antonio Martinez told SA Jane Brillhart and me that he brought condoms and marijuana. Three Lifestyle condoms were found Jose Antonio Martinez's right front pants pocket. A bag that contained a green substance, that Jose Antonio Martinez identified as marijuana, was found in Martinez's left sock. Jose Antonio Martinez said he and the girl were going to smoke the marijuana and he had the condoms to use with the girl just in case. Jose Antonio Martinez told me he has been using "ontop503" on Yahoo for approximately three months.

Based upon the above information and my experience, I respectfully submit that there is probable cause to believe that Jose Antonio Martinez (aka: "ontop503") has committed a violation of Title 18, United States Code, Section 2422(b), in that he has used a facility of interstate commerce to attempt to or to knowingly persuade, induce, entice or coerce an individual who has not attained the age of 18 years to engage in sexual activity for which any person can be charged with a criminal offense.

This affidavit has been reviewed and approved for presentation by Assistant United States Attorney Greg Nyhus.


Chadwick J. Opitz
FBI -Task Force Officer

Sworn to me and subscribed in my presence on this 5 day of October, 2006.


United States Magistrate Judge
Hon. Donald C. Ashmanskas